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**Permanent Forum on Indigenous Issues**
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**Mandated areas**

## Statements submitted by non-governmental organizations in consultative status with the Economic and Social Council

## International Indian Treaty Council

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 30 and 31 of Economic and Social Council resolution 1996/31.

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1. As we approach the end of the International Decade of the World's Indigenous People in 2004, a sense of urgency has been expressed by some indigenous peoples, their representatives and organizations, as well as some States concerning the United Nations draft declaration on the rights of indigenous people and the apparent lack of progress of the open-ended intersessional working group created by the Commission on Human Rights under its resolution 1995/32.

2. We are told by some States that if the draft declaration is not approved by the intersessional working group and submitted to the Commission by the end of the Decade, the process of standard setting for indigenous peoples will end. Such warnings have gone hand in hand with pressure to accept amendments or changes that limit or diminish the rights of indigenous peoples currently recognized under international law.

3. In the name of "progress" we are asked to "compromise" or "negotiate" by accepting lesser standards for indigenous peoples on a declaration specifically intended to recognize their rights. The refusal by the vast majority of indigenous peoples in the working group to compromise our rights has been characterized as obstinate, unrealistic and/or obstructionist.

4. Indigenous peoples' organizations participating in this process and many more around the world have endorsed the current text of the Subcommission for the

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Promotion and Protection of Human Rights as representing the minimum standard required for the survival of indigenous peoples. Indigenous participants, the Chairman/Rapporteur and many of the States accept the current text as adopted by the Subcommission as the basis of our discussions. The working group agreed to consider and discuss proposals for changes that:

(a) Deviate as little as possible from the current text;

(b) Attempt to strengthen or clarify the current text;

(c) Uphold the fundamental principles of non-discrimination and racial equality.

5. While many States are making a sincere attempt to maintain those principles in our discussions, others continue to propose amendments that seek to undermine our most basic rights, effectively subjugating the rights of indigenous peoples to the vastly divergent and, in many cases, blatantly discriminatory "domestic" laws of States.

6. The recognition by States of indigenous human rights and fundamental freedoms after centuries of colonization and marginalization cannot be an easy process. It will take time. Participants in this process should not panic or despair or give up in frustration if the process takes longer than we all would hope.

7. Our most profound concerns extend not only to the time pressures being placed upon this process but also to the apparent lack of political will of a handful of States to accept indigenous peoples' human rights and fundamental freedoms already recognized by the United Nations, its subsidiary organs and treaty monitoring bodies. Those few States that participate with the working group on the declaration, since its inception, have consistently made proposals for changes in the Subcommission's draft that would diminish or impair indigenous peoples' human rights and fundamental freedoms without consideration of established international human rights law and the established international legal framework. Their approach is either to make up new and lesser rights than those enjoyed by other peoples, or to hold those rights hostage with the apparent purpose of diminishing other rights.

8. For example, the United States proposes to amend article 3, affirming the right of indigenous peoples to self-determination, to say that indigenous peoples have the right to "internal self-determination", a concept not found in international law. That same State agrees that the word "peoples" may be used without qualification in the declaration, but refuses to agree to use the word, even in the title of the declaration, until the declaration "further defines" our rights. It is those gambits and proposals that have delayed the process of drafting the declaration. Those gambits and proposals violate United Nations guidelines as established by the General Assembly in its resolution 41/120 on standard setting in the field of human rights.

9. Resolution 41/120 emphasizes the primacy of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in the extensive network of international standards in the field of human rights established by United Nations bodies and specialized agencies.

10. In paragraph 2 of the resolution, the General Assembly urges Member States and United Nations bodies engaged in developing new international human rights

standards to give due consideration in this work to the established international legal framework.

11. The General Assembly, in paragraph 4, invites Member States and United Nations bodies to bear in mind the following guidelines in developing international instruments in the field of human rights; such instruments should, inter alia:

(a) Be consistent with the existing body of international human rights law;

(b) Be of fundamental character and derive from the inherent dignity and worth of the human person;

(c) Be sufficiently precise to give rise to identifiable and practicable rights and obligations;

(d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems;

(e) Attract broad international support.

12. The Human Rights Committee, the treaty monitoring body of the International Covenant on Civil and Political Rights, has recognized the right of indigenous peoples to self-determination, applying it to the indigenous peoples of Canada,[1] Mexico,[2] Norway[3] and Australia.[4]

13. Our collective rights to land, territories and natural resources have also been recognized by the Human Rights Committee under article 27 of the International Covenant on Civil and Political Rights under its complaints procedure,[5] as well as its General Comment 23. Given the primacy of the International Covenant, as declared by the General Assembly in its aforementioned resolution on standard setting, there should be no doubt of the recognition of the right of indigenous peoples to self-determination, as fully consistent with article 1 of the Covenant.

14. Worse, some States take the position that, as they are not parties to conventions, covenants or jurisprudence that recognize indigenous rights, they are not bound to recognize those rights in the declaration, since the standard does not apply to them. The General Assembly resolution requires that all States engaged in standard setting pay due consideration to established international law. It does not require that a State be previously bound by the standard in order to apply it in standard setting. A standard need not be consistent with domestic law under those guidelines. The requirement is that it be consistent with international law.

15. We would agree with the International Labour Organization (E/CN.4/1995/119) that any standard which may be adopted by the United Nations should not in any case be lower than those already recognized and accepted by the extensive United Nations network of international standards. We would also agree with the secretariat that the Subcommission draft declaration on the rights of indigenous peoples is fully consistent with established principles of international law.[6]

16. The warning of dire consequences should indigenous peoples refuse to accept a lesser standard in order to achieve the adoption of a declaration, any declaration, by the end of the Decade is belied by decisions of the Commission itself on time limitations on standard setting. We would direct the attention of the Permanent Forum to paragraph 60 of the annex to Commission on Human Rights decision 2000/109:

"60. In creating any standard-setting working group, the Commission should consider a specific time frame within which the group would be called upon to complete its task. This could vary, depending on the complexity of the issue and the nature of the instrument. However, in most instances, the established time frame should not in principle exceed five years. If, by the end of this time frame, the working group has not been able to achieve the desired result, the Commission should consider the following options:

"Extending the mandate;

"Providing for a period of reflection (such as one or two years); during this period, chairpersons should continue to consult widely and where possible provide the Commission with papers on an envisaged outcome;

"Examining the working methods of the particular working group (taking into account the format of the report, annexes to the report, chairperson's perception paper, etc.)."

17. Clearly, the end of the Decade, as the options provided for by the Commission decision indicate, does not mean the end of the declaration or the process. The Commission itself calls for less drastic outcomes, including extensions of time and periods of reflection. The Permanent Forum itself should take part in any eventuality and make appropriate recommendations to the Commission as to extensions of time and methods of work regarding the declaration, that it not be lost or compromised.

18. The International Indian Treaty Council would therefore strongly urge the Permanent Forum on Indigenous Issues to recommend to the Commission on Human Rights and its intersessional working group on the draft declaration, fully to apply the guidelines as set out by the General Assembly in its resolution 41/120 in the elaboration of the declaration on the rights of indigenous peoples. We further urge the Permanent Forum to recommend to the Commission and its working group on the draft declaration that any standard that it adopts not be lower than those already recognized by international law and the internationally established legal framework.

*Notes*

[1] CCPR/C/79/Add.105.

[2] Ibid., Add.109.

[3] Ibid., Add.112.

[4] *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40* (A/55/40), vol. I, paras. 498-528.

[5] See e.g., Ominayak v. Canada, Communication No. 167/1984.

[6] Technical review of the United Nations draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1994/2, para. 30). The secretariat has also done similar technical reviews of other important human rights instruments, such as the draft convention on the rights of the child (E/CN.4/1989/WG.1/CRP.1/Add.1), the draft international convention on the protection of all migrant workers and their families (A/C.3/45/WG.1/WP.1/Rev.1/Add.1) and the draft declaration on the rights of persons belonging to national or ethnic, religious or linguistic minorities (E/CN.4/1991/WG.5/CRP.1).